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May 7, 2004

By Electronic Filing

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th St., SW
Washington, D.C. 20554

Re: *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, et al., Petition for Waiver (filed February 11, 2004).

Dear Ms. Dortch:

AT&T Corp. ("AT&T") submits this *ex parte* letter to urge the Commission immediately to reject BellSouth's waiver petition concerning conversions to enhanced extended links ("EELs")[1] in light of intervening events. BellSouth has begun to engage in patently unlawful self-help measures to avoid its legal obligation to provide unbundled access to EELs. BellSouth refuses to agree to interconnection agreement modifications to implement the *Triennial Review Order* repeal of the ban on commingling that was upheld by the D.C. Circuit even where AT&T and others agree to adopt the very same language – word for word – that BellSouth has published in its SGATs. And BellSouth recently announced that it will simply repudiate all of its interconnection agreements as of June 15 as they relate to EELs. These self-help measures violate the Commission's orders and the Act. The Commission should promptly deny BellSouth's waiver request and expressly reaffirm BellSouth's legal obligations.

BellSouth's recent actions dramatically underscore the falsity of one of the Petition's essential premises: that requesting carriers in BellSouth's region have quickly obtained new agreements that give them greatly expanded access to EELs in the wake of the *Triennial Review Order*. BellSouth argued that the Commission should "waive" this transition to

[1] *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, et al., Petition for Waiver (filed February 11, 2004) ("Petition").

new agreements, and hold that BellSouth need not undertake any conversions to EELs, on the ground that BellSouth otherwise might be required to provide access to some EELs that a state commission may later remove from the list of mandatory unbundled network elements in its delegated impairment inquiry. *See* Petition at 6. The commenters have already demonstrated that BellSouth's "waiver" request is meritless for a host of reasons. But the central factual premise – that requesting carriers have widely obtained new agreements permitting them to make immediate conversions – has always been untrue. *See, e.g.*, AT&T Comments at 4 (March 19, 2004).

But now BellSouth has unlawfully taken matters into its own hands. As explained below, BellSouth is now actively *frustrating* the process of negotiating and obtaining amendments to existing agreements through various unlawful self-help measures.

Refusal to Modify Interconnection Agreements to Reflect EELs Rule Changes. The *Triennial Review Order* makes clear that *any* refusal to permit commingling is unlawful. As the Commission explained, a ban on commingling would constitute an "unjust and unreasonable practice" under § 201 of the Act, as well as an "undue and unreasonable prejudice or advantage" under § 202 of the Act. *Triennial Review Order* ¶ 581. The Commission also held that "restricting commingling would be inconsistent with the nondiscrimination requirement in section 251(c)(3)." *Id.* The D.C. Circuit did not reverse any of these holdings. *See USTA* v. *FCC*, Nos. 00-1012 et al., slip op. at 55, 58-59, 61-62 (March 2, 2004) ("*USTA II*").

Nonetheless, BellSouth simply refuses to permit requesting carriers to adopt BellSouth's *own* SGAT language on commingling. On January 15 and February 2, 2004, BellSouth amended its SGATs in Florida and Georgia respectively to conform those offers to the Commission's *Triennial Review Order* (¶¶ 579-84). In particular, BellSouth included a new section called "Commingling of Services," in which BellSouth made clear that a requesting carrier may commingle network elements with BellSouth's tariffed services.

On February 23, 2004, AT&T exercised its right to opt into these provisions of the SGAT, and it requested that contrary language from AT&T's existing agreements be deleted. AT&T sent the appropriate amendments to its interconnection agreements to BellSouth for execution. *See* Attachment 1.

BellSouth refused. *See* Letter from Nicole Bracy (BellSouth) to Roberta Stevens (AT&T), March 4, 2004 (Attachment 2). BellSouth claimed that, to adopt its SGAT commingling provisions, AT&T must also adopt "all other TRO related provisions" of the SGAT – including provisions that AT&T and BellSouth dispute. *Id.* at 1. BellSouth also claimed that the parties were "negotiating the exact provisions in their current negotiations that AT&T and TCG are requesting," and therefore the request to opt into the SGAT provision was "duplicative." *Id.* In addition, BellSouth asserted that the request to adopt "only the commingling provisions from the SGAT" was not "compatible with AT&T's and TCG's current provisions in the Interconnection Agreements," although BellSouth never explained how such terms – which, as the law requires, merely allow commingling – would not be "compatible." *Id.* After AT&T objected to BellSouth's refusal, BellSouth sent AT&T another letter repeating the

same specious grounds for refusal. *See* Letter from Bill Peacock (AT&T) to Nicole Bracy (BellSouth), April 7, 2004 (Attachment 3); Letter from Nicole Bracy (BellSouth) to Bill Peacock (AT&T), April 19, 2004 (Attachment 4).[2]

BellSouth's refusal to modify its agreements to include its own SGAT language on commingling is not only unreasonable, but is also discriminatory and anticompetitive. *See Triennial Review Order* ¶ 704; 47 U.S.C. § 251(c)(1). Moreover, BellSouth's assertion that the *Triennial Review Order* requires a party to opt into all SGAT provisions that an incumbent LEC contends are compelled by that order is simply wrong, and BellSouth does not provide a cite to any such holding. BellSouth's refusal to implement the requested modifications belies any notion that BellSouth is quickly negotiating new EELs arrangements in its region.[3]

Repudiation of All Existing Agreements. On April 22, 2004, BellSouth sent all CLECs in its region a letter stating that, as of June 15, 2004, BellSouth would offer dedicated transport and high capacity loops "solely via its access tariffs." *See* Letter from Jerry Hendrix (BellSouth) to All CLECs, April 22, 2004 (Attachment 6).[4] BellSouth "invited" all CLECs to negotiate a "transition from UNE transport and high capacity loops under your company's existing interconnection agreement to transport offered via BellSouth's tariffs," but emphasized that "this offer is available only until June 15, 2004" – making clear that BellSouth intends to repudiate its existing contractual commitments on that date.

This latest attempt at self-help is patently unlawful, for numerous reasons. First, even if the Commission's unbundling rules are eventually vacated, BellSouth has no authority to repudiate its agreements unilaterally. Rather, changes in BellSouth's arrangements with AT&T are governed by its interconnection agreements, which contain "change in law" provisions. It is for the state commissions, not BellSouth, to resolve disputes over the proper application of contractual change of law provisions in light of *USTA II*.[5]

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[2] Indeed, BellSouth rejected AT&T requests for EELs conversions that have been pending since *October*, on the grounds that "negotiations" are not yet completed. *See* Letter from Nicole Bracy (BellSouth) to Denise Berger (AT&T), April 28, 2004 (Attachment 5). BellSouth has claimed that it withdrew the Florida SGAT on March 15, and therefore that SGAT was not available for adoption (*see* Attachment 4). AT&T has no record of such a withdrawal in Florida, but it is immaterial because BellSouth concedes that the Georgia SGAT has become effective and yet BellSouth still refuses to modify its contracts to include the language from the approved Georgia SGAT.

[3] BellSouth's attempts to place conditions on AT&T's opt-in rights – such as requiring AT&T to negotiate first – are unlawful. *See* 47 C.F.R. § 51.809(a) (incumbent LEC must make provisions available "without unreasonable delay"); 47 U.S.C. § 252(i).

[4] BellSouth recently re-confirmed this position. *See* Letter from Jerry Hendrix (BellSouth) to Stephen G. Huels (AT&T), April 30, 2004 (Attachment 7).

[5] The change of law provisions would not be triggered merely by the D.C. Circuit's issuance of

Even if the D.C. Circuit's decision did trigger the change of law provisions, the D.C. Circuit's decision by its terms vacated only the Commission's rule requiring ILECs to unbundle dedicated transport. The court left intact the Commission's rule requiring ILECs to unbundle enterprise loops, and it also refused to vacate the Commission's rule prohibiting a ban on commingling. *See USTA II*, slip op. at 60-61; *see also id.* at 26-28 (discussing only dedicated transport and citing only to *Triennial Review Order* paragraphs discussing dedicated transport). Accordingly, BellSouth remains under an unambiguous requirement to provide unbundled access to enterprise loops and to permit requesting carriers to commingle those loops with tariffed services.

Nor can BellSouth simply repudiate its obligation to provide even dedicated transport. The change of law provisions in BellSouth's interconnection agreements require BellSouth to enter into "good faith" negotiations for a new agreement, and if the parties fail to reach agreement, the parties must submit the dispute to the state commission for arbitration. The mere vacatur of the FCC's rules does not necessarily mean that BellSouth would have no legal obligation under federal and state law to provide unbundled access to dedicated transport. *USTA II* did not hold that the Act does not require BellSouth to provide unbundled access to dedicated transport, but only that the Commission's rule was inadequately supported. But even if Section 251 no longer required such unbundling, BellSouth would have to establish that no other sources of federal or state law required that unbundling. These questions are for state commissions to decide, not BellSouth acting unilaterally. *See, e.g., Illinois Bell Tel. Co.* v. *WorldCom Techs. Inc.*, 179 F.3d 566, 574 (7th Cir. 1999) (upholding reciprocal compensation rules imposed by state commission in absence of federal rule); *USTA II*, slip op. at 60-61 (recognizing the possibility of independent state commission unbundling orders).

In short, the Commission should issue an order denying BellSouth's Petition as quickly as possible. BellSouth's self-help measures are blatantly unlawful and will necessitate extensive litigation in the absence of prompt Commission action. The Commission is in a position to put a halt to BellSouth's obstructions by denying BellSouth's Petition and strongly reaffirming BellSouth's legal obligation to establish new EELs arrangements with CLECs. The Commission should do so promptly, to prevent BellSouth from undermining the statutory scheme, which is built on interconnection agreements, not unilateral self-help.

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its mandate in *USTA II*. AT&T's change of law provisions, like those of many other carriers, are triggered only by "final" judicial action. The D.C. Circuit's *USTA II* decision is still subject to review in the Supreme Court and thus is not a "final," nonappealable action for purposes of these change of law provisions. Although it is true that the Commission suggested that the issuance of the *Triennial Review Order* rules should be interpreted as a "change in law" (because the issuance of those rules marked the point at which *USTA I* became final and nonappealable, *Triennial Review Order* ¶ 705), there is *no* plausible theory under which the issuance of the D.C. Circuit's decision in *USTA II* could be interpreted as a final and nonappealable decision establishing a new, second change in law for purposes of the "change in law" provisions.

Respectfully submitted,

/s/ David L. Lawson

David L. Lawson

ATTACHMENT 1

EIGHTH AMENDMENT
TO THE
AGREEMENT BETWEEN
TCG SOUTH FLORIDA
AND
BELLSOUTH TELECOMMUNICATIONS, INC.
FLORIDA
DATED OCTOBER 26, 2001

Pursuant to this Amendment, (the "Amendment"), TCG South Florida ("TCG"), and BellSouth Telecommunications, Inc. ("BellSouth"), hereinafter referred to collectively as the "Parties," hereby agree to amend that certain Interconnection Agreement between the Parties dated October 26, 2001, ("Agreement").

WHEREAS, BellSouth and TCG entered into the Agreement on October 26, 2001, and;

NOW THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby covenant and agree as follows:

1. The Parties agree to incorporate the following Commingling of Services language from the Florida SGAT, Attachment 2, Sections 1.9 through 1.9.4. The SGAT was filed by BellSouth with the FPSC on January 15, 2004. The language should be inserted in Attachment 2, after Section 2.10 in the Florida Agreement.

   1.9 Commingling of Services

   1.9.1 Commingling means the connecting, attaching, or otherwise linking of a Network Element, or a Network Element combination, to one or more telecommunications services or facilities that TCG has obtained at wholesale from BellSouth, or the combining of a Network Element or Network Element combination with one or more such wholesale telecommunications services or facilities.

   1.9.2 Subject to the limitations set forth elsewhere in this Attachment, BellSouth shall not deny access to a Network Element or a combination of Network Elements on the grounds that one or more of the elements: 1) is connected to, attached to, linked to, or combined with such a facility or service obtained from BellSouth; or 2) shares part of BellSouth's network with access services or inputs for non-qualifying services.

   1.9.3 BellSouth will not "ratchet" a commingled circuit. Unless otherwise agreed to by the Parties, the Network Element portion of such circuit will be billed at the rates set forth in this Agreement

and the remainder of the circuit or service will be billed in accordance with BellSouth's tariffed rates.

1.9.4 When multiplexing equipment is attached to a commingled circuit, the multiplexing equipment will be billed from the same jurisdictional authorization (agreement or tariff) as the higher level of service and the Central Office Channel Interfaces will be billed from the same jurisdictional authorization (agreement or tariff) as the lower level of service.

2. The Parties agree to delete the following language from Attachment 2, Sections 2.11.2.1, 2.11.2.2, and 2.11.2.3 of the Agreement:

This option does not allow loop-transport combinations to be connected to BellSouth's tariffed services.

3. The parties agree to delete the following language from Attachment 2, Section 2.11.6.1 of the Agreement:

Such combinations shall not be connected to BellSouth tariffed services.

4. All of the other provisions of the Agreement, dated October 26, 2001, shall remain in full force and effect.

5. This amendment shall become effective upon signature of both parties.

6. Either or both of the Parties are authorized to submit this Amendment to the respective state regulatory authorities for approval subject to Section 252(e) of the Federal Telecommunications Act of 1996.

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be executed by their respective duly authorized representatives on the date indicated below.

TCG South Florida	**BellSouth Telecommunications, Inc.**
By:_____	By:_____
Name: Bill C. Peacock	Name: Kristen E. Rowe
Title: Director – Local Services & Access Management	Title: Director
Date:_____	Date:_____

ELEVENTH AMENDMENT
TO THE
AGREEMENT BETWEEN
AT&T COMMUNICATIONS OF THE SOUTHERN STATES, LLC
AND
BELLSOUTH TELECOMMUNICATIONS, INC.
GEORGIA
DATED AUGUST 7, 2001

Pursuant to this Amendment, (the "Amendment"), AT&T Communications of the Southern States, LLC ("AT&T"), and BellSouth Telecommunications, Inc. ("BellSouth"), hereinafter referred to collectively as the "Parties," hereby agree to amend that certain Interconnection Agreement between the Parties dated August 7, 2001, ("Agreement").

WHEREAS, BellSouth and AT&T entered into the Agreement on August 7, 2001, and;

NOW THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby covenant and agree as follows:

1. The Parties agree to incorporate the following Commingling of Services language from the Georgia SGAT, Attachment 2, Sections 1.9 through 1.9.4. The SGAT was filed by BellSouth with the GPSC on February 2, 2004. The language should be inserted in Attachment 2, after Section 2.10 in the Georgia Agreement.

   1.9 Commingling of Services

   1.9.1 Commingling means the connecting, attaching, or otherwise linking of a Network Element, or a Network Element combination, to one or more telecommunications services or facilities that AT&T has obtained at wholesale from BellSouth, or the combining of a Network Element or Network Element combination with one or more such wholesale telecommunications services or facilities.

   1.9.2 Subject to the limitations set forth elsewhere in this Attachment, BellSouth shall not deny access to a Network Element or a combination of Network Elements on the grounds that one or more of the elements: 1) is connected to, attached to, linked to, or combined with such a facility or service obtained from BellSouth; or 2) shares part of BellSouth's network with access services or inputs for non-qualifying services.

   1.9.3 BellSouth will not "ratchet" a commingled circuit. Unless otherwise agreed to by the Parties, the Network Element portion of

such circuit will be billed at the rates set forth in this Agreement and the remainder of the circuit or service will be billed in accordance with BellSouth's tariffed rates.

1.9.4 When multiplexing equipment is attached to a commingled circuit, the multiplexing equipment will be billed from the same jurisdictional authorization (agreement or tariff) as the higher level of service and the Central Office Channel Interfaces will be billed from the same jurisdictional authorization (agreement or tariff) as the lower level of service.

2. The Parties agree to delete the following language from Attachment 2, Sections 2.11.2.1, 2.11.2.2, and 2.11.2.3 of the Agreement:

This option does not allow loop-transport combinations to be connected to BellSouth's tariffed services.

3. The parties agree to delete the following language from Attachment 2, Section 2.11.6.1 of the Agreement:

Such combinations shall not be connected to BellSouth tariffed services.

4. All of the other provisions of the Agreement, dated August 7, 2001, shall remain in full force and effect.

5. This amendment shall become effective upon signature of both parties.

6. Either or both of the Parties are authorized to submit this Amendment to the respective state regulatory authorities for approval subject to Section 252(e) of the Federal Telecommunications Act of 1996.

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be executed by their respective duly authorized representatives on the date indicated below.

AT&T Communications of the Southern States, LLC	**BellSouth Telecommunications, Inc.**
By:_____	By:_____
Name: Bill C. Peacock	Name: Kristen E. Rowe
Title: Director – Local Services & Access Management	Title: Director
Date:_____	Date:_____

EIGHTH AMENDMENT
TO THE
AGREEMENT BETWEEN
AT&T COMMUNICATIONS OF THE SOUTHERN STATES, LLC
D/B/A AT&T
AND
BELLSOUTH TELECOMMUNICATIONS, INC.
FLORIDA
DATED OCTOBER 26, 2001

Pursuant to this Amendment, (the "Amendment"), AT&T Communications of the Southern States, LLC d/b/a AT&T ("AT&T"), and BellSouth Telecommunications, Inc. ("BellSouth"), hereinafter referred to collectively as the "Parties," hereby agree to amend that certain Interconnection Agreement between the Parties dated October 26, 2001, ("Agreement").

WHEREAS, BellSouth and AT&T entered into the Agreement on October 26, 2001, and;

NOW THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby covenant and agree as follows:

1. The Parties agree to incorporate the following Commingling of Services language from the Florida SGAT, Attachment 2, Sections 1.9 through 1.9.4. The SGAT was filed by BellSouth with the FPSC on January 15, 2004. The language should be inserted in Attachment 2, after Section 2.10 in the Florida Agreement.

   1.9 Commingling of Services

   1.9.1 Commingling means the connecting, attaching, or otherwise linking of a Network Element, or a Network Element combination, to one or more telecommunications services or facilities that AT&T has obtained at wholesale from BellSouth, or the combining of a Network Element or Network Element combination with one or more such wholesale telecommunications services or facilities.

   1.9.2 Subject to the limitations set forth elsewhere in this Attachment, BellSouth shall not deny access to a Network Element or a combination of Network Elements on the grounds that one or more of the elements: 1) is connected to, attached to, linked to, or combined with such a facility or service obtained from BellSouth; or 2) shares part of BellSouth's network with access services or inputs for non-qualifying services.

1.9.3 BellSouth will not "ratchet" a commingled circuit. Unless otherwise agreed to by the Parties, the Network Element portion of such circuit will be billed at the rates set forth in this Agreement and the remainder of the circuit or service will be billed in accordance with BellSouth's tariffed rates.

1.9.4 When multiplexing equipment is attached to a commingled circuit, the multiplexing equipment will be billed from the same jurisdictional authorization (agreement or tariff) as the higher level of service and the Central Office Channel Interfaces will be billed from the same jurisdictional authorization (agreement or tariff) as the lower level of service.

2. The Parties agree to delete the following language from Attachment 2, Sections 2.11.2.1, 2.11.2.2, and 2.11.2.3 of the Agreement:

This option does not allow loop-transport combinations to be connected to BellSouth's tariffed services.

3. The parties agree to delete the following language from Attachment 2, Section 2.11.6.1 of the Agreement:

Such combinations shall not be connected to BellSouth tariffed services.

4. All of the other provisions of the Agreement, dated October 26, 2001, shall remain in full force and effect.

5. This amendment shall become effective upon signature of both parties.

6. Either or both of the Parties are authorized to submit this Amendment to the respective state regulatory authorities for approval subject to Section 252(e) of the Federal Telecommunications Act of 1996.

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be executed by their respective duly authorized representatives on the date indicated below.

AT&T Communications of the Southern States, LLC d/b/a AT&T	**BellSouth Telecommunications, Inc.**
By:_____	By:_____
Name: Bill C. Peacock	Name: Kristen E. Rowe
Title: Director – Local Services & Access Management	Title: Director
Date:_____	Date:_____

TWELTH AMENDMENT
TO THE
AGREEMENT BETWEEN
TELEPORT COMMUNICATIONS ATLANTA, INC.
AND
BELLSOUTH TELECOMMUNICATIONS, INC.
GEORGIA
DATED AUGUST 7, 2001

Pursuant to this Amendment, (the "Amendment"), Teleport Communications Atlanta, Inc. ("TCG"), and BellSouth Telecommunications, Inc. ("BellSouth"), hereinafter referred to collectively as the "Parties," hereby agree to amend that certain Interconnection Agreement between the Parties dated August 7, 2001, ("Agreement").

WHEREAS, BellSouth and TCG entered into the Agreement on August 7, 2001, and;

NOW THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby covenant and agree as follows:

1. The Parties agree to incorporate the following Commingling of Services language from the Georgia SGAT, Attachment 2, Sections 1.9 through 1.9.4. The SGAT was filed by BellSouth with the GPSC on February 2, 2004. The language should be inserted in Attachment 2, after Section 2.10 in the Georgia Agreement.

   1.9 Commingling of Services

   1.9.1 Commingling means the connecting, attaching, or otherwise linking of a Network Element, or a Network Element combination, to one or more telecommunications services or facilities that TCG has obtained at wholesale from BellSouth, or the combining of a Network Element or Network Element combination with one or more such wholesale telecommunications services or facilities.

   1.9.2 Subject to the limitations set forth elsewhere in this Attachment, BellSouth shall not deny access to a Network Element or a combination of Network Elements on the grounds that one or more of the elements: 1) is connected to, attached to, linked to, or combined with such a facility or service obtained from BellSouth; or 2) shares part of BellSouth's network with access services or inputs for non-qualifying services.

   1.9.3 BellSouth will not "ratchet" a commingled circuit. Unless otherwise agreed to by the Parties, the Network Element portion of such circuit will be billed at the rates set forth in this Agreement

and the remainder of the circuit or service will be billed in accordance with BellSouth's tariffed rates.

1.9.4 When multiplexing equipment is attached to a commingled circuit, the multiplexing equipment will be billed from the same jurisdictional authorization (agreement or tariff) as the higher level of service and the Central Office Channel Interfaces will be billed from the same jurisdictional authorization (agreement or tariff) as the lower level of service.

2. The Parties agree to delete the following language from Attachment 2, Sections 2.11.2.1, 2.11.2.2, and 2.11.2.3 of the Agreement:

This option does not allow loop-transport combinations to be connected to BellSouth's tariffed services.

3. The parties agree to delete the following language from Attachment 2, Section 2.11.6.1 of the Agreement:

Such combinations shall not be connected to BellSouth tariffed services.

4. All of the other provisions of the Agreement, dated August 7, 2001, shall remain in full force and effect.

5. This amendment shall become effective upon signature of both parties.

6. Either or both of the Parties are authorized to submit this Amendment to the respective state regulatory authorities for approval subject to Section 252(e) of the Federal Telecommunications Act of 1996.

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be executed by their respective duly authorized representatives on the date indicated below.

Teleport Communications Atlanta, Inc.	**BellSouth Telecommunications, Inc.**
By:_____	By:_____
Name: Bill C. Peacock	Name: Kristen E. Rowe
Title: Director – Local Services & Access Management	Title: Director
Date:_____	Date:_____

ATTACHMENT 2

BellSouth Interconnection Services
675 W. Peachtree Street, NE
34S91
Atlanta, Georgia 30375

Nicole Bracy
(404) 927-7596
FAX (404) 529-7839

Sent Via E-mail and U.S. Mail

March 4. 2004

Ms. Roberta Stevens
Local Services and Assess Management
AT&T
567 Cascade Dr
Lilburn, GA 30047

Re: Amendment Requests

Dear Roberta:

This is in response to your e-mail dated February 23, 2004, regarding AT&T's and TCG's request to adopt Section 1.9, Commingling of Services, from the BellSouth Statement of Generally Acceptable Terms (SGAT) for the states of Florida and Georgia, pursuant to Section 5.1 of the General Terms and Conditions of the current Interconnection Agreements.

The SGATs for Florida and Georgia are pending approval from the Public Service Commissions (PSC). Once the SGATs have been approved or become effective, they will be available for adoption. However, your request to adopt only the commingling provisions from the SGAT is neither compatible with AT&T's and TCG's current provisions in the Interconnection Agreements, nor is it compatible with current law. Consistent with the Federal Communications Commission's (FCC) Triennial Review Order (TRO), all other TRO related provisions should accompany the commingling provisions. AT&T and TCG are also requesting to delete the safe harbors for special access conversions. Again, this is not consistent with the TRO.

Furthermore, the Parties are negotiating the exact provisions in their current negotiations that AT&T and TCG are requesting. BellSouth finds the requests duplicative in nature, and therefore, respectfully denies AT&T's and TCG's requests.

Sincerely,

Nicole Bracy
Manager, Interconnection Services

ATTACHMENT 3

Bill C. Peacock
Director – Local Services & Access Management
6304 Hwy 5
Douglasville, Georgia 30135
Tel. No. 678-715-0289
Fax No. 281-664-4382

April 7, 2004

Ms. Nicole Bracy
Manger – Interconnection Services
BellSouth Interconnection Services
675 W. Peachtree Street, N.E.
34S91
Atlanta, GA 30375

RE: ADOPTION – Commingling of Services Provision – Georgia SGAT, Attachment 2, Sections 1.9 through 1.9.4.

Dear Nicole:

This letter is in response to your correspondence dated March 3, 2004 regarding the requests by AT&T Communications of the Southern States, LLC d/b/a AT&T ("AT&T") Teleport Communications Atlanta, Inc. and TCG South Florida ("TCG") to incorporate certain identified provisions of BellSouth's Georgia Statement of Generally Available Terms and Conditions "SGAT" into AT&T's existing interconnection agreement ("ICA").

On January 15 and 28, 2004 respectively, BellSouth filed revised SGATs with the Florida and Georgia Public Service Commissions. Your letter states, "Once the SGATs have been approved or become effective, they will be available for adoption." In accordance with Section 252(f) of the Federal Telecommunications Act, these agreements were effective 60 days after filing, since neither the Georgia nor Florida Commissions took further action subsequent to the filing of the revised SGAT's. As effective SGATs, the terms of these agreements, including specific provisions relating to network elements, are available for adoption pursuant to Section 252(i) of the FTA.

AT&T strongly disagrees with BellSouth's contention that AT&T is prohibited from adopting the "commingling" terms of the filed SGAT agreement that BellSouth has made generally available to all carriers until ongoing ICA language negotiations between the parties are concluded. To the extent BellSouth maintains its position in this regard, AT&T believes it constitutes an unlawful and discriminatory barrier to entry for its service offerings in the States of Georgia and Florida.

The existence of ongoing TRO-amendment negotiations between AT&T and BellSouth does not obviate BellSouth's obligation under federal law to promptly make available to AT&T or any other requesting CLEC the terms and conditions contained in the SGAT Agreement duly filed with and approved by the Georgia and Florida Public Service Commissions. Federal requirements are straightforward. Section 252(i) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 ("Act"), mandates that:

> A local exchange carrier shall make available any interconnection service, or network element provided under an agreement approved by this section to which it is a party to any other requesting carrier upon the same terms and conditions as those provided in the agreement.

Similarly, the FCC has codified this requirement in Section 51.809(a) of its rules:

> An incumbent LEC shall make available without unreasonable delay to any requesting telecommunications carrier any individual interconnection, service or network element arrangement contained in any agreement to which it is a party that is approved by a state commission pursuant to section 252 of the Act, upon the same rates, terms and conditions as those provided in the agreement.

Accordingly, BellSouth's attempt to unilaterally place conditions on its obligation to permit TCG to adopt a current interconnection agreement pursuant to Section 252(i) is contrary to both the Act and FCC rules. There is no support within the Act for any attempt by BellSouth to make negotiation of TRO amendment language a condition precedent to granting AT&T's adoption request.

AT&T notes that BellSouth's actions in this regard are customer-affecting in nature and absent prompt resolution, will undermine AT&T's ability to offer new services in Georgia and Florida "without unreasonable delay," in accordance with the requirements of the Act.

Given the time-sensitive and customer-affecting nature of this situation, TCG requests that BellSouth provide a response to this letter by April 9, 2004. Absent immediate resolution of this issue, TCG will be forced to take all necessary action to compel BellSouth's compliance with its "opt-in" obligations under federal law.

Sincerely,

Bill Peacock

ATTACHMENT 4

BELLSOUTH

BellSouth Interconnection Services
675 W. Peachtree Street, NE
34S91
Atlanta, Georgia 30375

Nicole Bracy
(404) 927-7596
FAX (404) 529-7839

Sent Via E-mail and U.S. Mail

April 19, 2004

Mr. Bill Peacock
Director - Local Services and Access Management
AT&T
6304 Hwy 5
Douglasville, GA 30135

Re: ADOPTION – Commingling of Services Provision – Georgia and Florida SGATs, Attachment 2, Sections 1.9 through 1.9.4

Dear Bill:

This is in response to your letters dated April 7, 2004, which is responding to my March 4, 2004 letter to Roberta Stevens, regarding AT&T and TCG's request to adopt Section 1.9, Commingling of Services, from the BellSouth Statement of Generally Acceptable Terms (SGAT) for the states of Florida and Georgia.

BellSouth filed revised SGATs with the Florida and Georgia Public Service Commissions (PSC) on January 15 and 29, 2004 respectively. However, on March 15, 2004, BellSouth filed a letter with the Florida PSC to withdraw the SGAT, and therefore, it is not available for adoption.

While the Georgia SGAT was effective 60 days after filing, your request to adopt only the commingling provisions from the SGAT is neither compatible with AT&T and TCG's current provisions in the Interconnection Agreements (Agreement), nor is it compatible with current law. As stated previously, consistent with the Federal Communications Commission's (FCC) Triennial Review Order (TRO), all other TRO related provisions should accompany the commingling provisions.

Further, the Parties are currently negotiating the requested provisions in the on-going negotiations for new Agreements.

BellSouth disagrees with AT&T's assertion that BellSouth's actions are customer-affecting in nature and undermines AT&T's ability to offer new services in Georgia and Florida. BellSouth is and has been willing to enter good-faith negotiations for commingling provisions with AT&T and TCG.

Please let me know your availability so that a meeting can be scheduled to discuss this issue further.

Sincerely,

Nicole Bracy
Manager - Interconnection Services

ATTACHMENT 5

BellSouth Interconnection Services
675 W. Peachtree Street, NE
34S91
Atlanta, Georgia 30375

Nicole Bracy
(404) 927-7596
FAX (404) 529-7839

Sent Via E-mail to deberger@att.com

April 28, 2004

Denise Berger
Local Services and Access Management
AT&T

Re: AT&T Enhanced Extended Links (EEL) Conversion Orders

Dear Ms. Berger:

This is in response to your e-mail dated April 14, 2004, to Bridgitte Nix, Petra Pryor, and Valerie Cottingham, regarding AT&T's request to convert Special Access (SPA) circuits to Unbundled Network Elements (UNEs) pursuant to the Federal Communications Commission's (FCC) Triennial Review Order (TRO). In October 2003, AT&T submitted requests to convert DS1s riding DS3s. The orders were returned for clarification with a request for AT&T also to submit requests for conversion of the DS3s associated with the DS1 circuits, if eligible pursuant to the Interconnection Agreement. BellSouth never received the conversion request for the DS3s. Under the parties' existing Interconnection Agreement, commingling is not permitted, and the entire DS3 circuit must be converted. As AT&T is aware, the SPA conversion rules were modified by the TRO, but AT&T's Interconnection Agreement has not yet been amended to become compliant with current law. If AT&T does not want to convert the DS3s, or if the DS3s are not eligible for conversion, its Interconnection Agreement will need to be amended to be compliant with current law.

Pursuant to Section 9 of the General Terms and Conditions of the Agreement, BellSouth and AT&T are currently negotiating an amendment to effectuate the changes brought about by the TRO. Until these changes are incorporated into the Interconnection Agreement, AT&T cannot utilize the eligibility requirements set forth in the TRO to convert SPA circuits to UNEs.

If you have additional questions, please contact me at 404.927.7596.

Sincerely,
Nicole Bracy
Manager - Interconnection Services

ATTACHMENT 6

BELLSOUTH

BellSouth Interconnection Services
675 West Peachtree Street
Atlanta, Georgia 30375

Carrier Notification
SN91084063

Date: April 22, 2004

To: All Competitive Local Exchange Carriers (CLEC)

Subject: CLECs – (Product/Service) – Commercial Offering for BellSouth Unbundled Network Element (UNE) Transport Transition

Upon the DC Circuit Court's effective vacatur of portions of the FCC's Triennial Review Order, BellSouth's obligation to provide dedicated transport and high capacity loops as an unbundled network element pursuant to Section 251 of the Telecommunications Act of 1996 will be eliminated. As such, and due to general regulatory uncertainty, BellSouth is preparing to offer its dedicated transport and high capacity loops products solely via its access tariffs.

Until June 15, 2004, BellSouth is offering a two-party transition plan to effect an efficient and coordinated transition from UNE transport and high capacity loops under your company's existing Interconnection Agreement to transport offered via BellSouth's tariffs.

This offer is available only until June 15, 2004. BellSouth invites your company to enter into good faith negotiations of this plan as soon as possible in order to complete these negotiations by June 15, 2004.

To begin the negotiation process or obtain additional information, please contact Shemega Goodman at 404.927.7571.

Sincerely,

ORIGINAL SIGNED BY JERRY HENDRIX

Jerry Hendrix -- Assistant Vice President
BellSouth Interconnection Services

ATTACHMENT 7

April 30, 2004

Mr. Stephen G. Huels
AT&T
Region Vice President
Suite 15WW1
222 West Adams
Chicago, Ill. 60606

Dear Mr. Huels:

This is in response to your letter dated April 26, 2004, regarding Carrier Notification letter SN91084063 announcing BellSouth's Unbundled Network Element (UNE) transport transition offering.

While BellSouth appreciates AT&T taking time to express its position regarding the Incumbent Local Exchange Carrier's (ILEC) unbundling obligations for dedicated transport and high capacity loops once vacatur becomes effective, BellSouth respectfully disagrees with AT&T's arguments. The D.C. Circuit Order explicitly vacated the Federal Communications Commission's (FCC) national impairment finding for DS1, DS3 and dark fiber elements. As a result, once vacatur becomes effective, ILECs will no longer have an obligation under Section 251 of the Act to offer these elements and, at that time, BellSouth will pursue the legal and regulatory options available to it.

In response to Chairman Powell's call for carriers to enter into commercial negotiations, BellSouth is taking a proactive approach to voluntarily negotiate a UNE transport and high capacity loop transition plan with its CLEC customers. BellSouth is offering a transition plan in hopes that its CLEC customers will consider BellSouth as their provider of special access services.

BellSouth looks forward to the opportunity to successfully negotiate agreements to create viable long-term service arrangements.

Sincerely,

Jerry Hendrix
Assistant Vice President
Interconnection Services